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## Introduction

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## Introduction

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Paul Holland

The compact, evocative conference title, “Courts Igniting Change” fits the present moment in juvenile justice, nationally and locally.<sup>1</sup> The past half-century of juvenile justice has been marked by change across three distinct eras, each marking a significant break with the past.<sup>2</sup> “Igniting” is an appropriate double-edged term for this moment—reflecting the possibility for illumination and creativity, but also the risk of destruction and loss of control. The ongoing and often heated local debate about the plans for a new juvenile detention center in King County sharply demonstrates the explosive potential of this subject.<sup>3</sup>

The proper role and reach of courts is one of the critical issues under debate in the modern era of juvenile justice. In her contribution to this issue, Wendy Heipt calls for a separate tribunal designed specifically to meet the needs of girls and led by “a committed and passionate juvenile court judge.”<sup>4</sup> In this way, Heipt draws on the juvenile court’s founding ethos.<sup>5</sup> In

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<sup>1</sup> The author participated in some of the planning calls, but was not responsible for the inspired choice of title.

<sup>2</sup> This recent history reinforces the claim advanced by legal historian David Tanenhaus that the “protean character” of the juvenile court has been essential to the court’s continued existence. DAVID S. TANENHAUS, *The Elusive Juvenile Court: Its Origins, Practices, and Re-Inventions*, in *THE OXFORD HANDBOOK OF JUVENILE CRIME AND JUVENILE JUSTICE*, 420 (Feld & Bishop eds., 2012).

<sup>3</sup> See Marcus Harrison Green, *Activists Can’t Stop the Youth Detention Center. So What Now?*, SEATTLE WKLY., Feb. 17, 2015, <http://www.seattleweekly.com/news/956961-129/activists-cant-stop-the-youth-detention>. For an example of this from a national perspective, see NELL BERNSTEIN, *BURNING DOWN THE HOUSE* 17 (2014), in which the author describes interviews from 2010 through 2013 with detained juveniles in several states and concludes that the only just and smart way forward is to “[r]aze the buildings, free the children, and begin anew.” JUVENILE IN JUSTICE, <http://www.juvenile-in-justice.com/> (last visited Apr. 8, 2015).

<sup>4</sup> Wendy S. Heipt, *Girl’s Court: A Gender Responsive Juvenile Court Alternative*, 13 SEATTLE J. SOC. JUST. 803, 839 (2015).

contrast, the keynote speaker at the conference, Chief Judge Steve Teske of the Juvenile Court in Clayton County, Georgia, described the work he and others have done to remove cases from court dockets and thus reduce the number of interactions between judges and youths. Specifically, the courts in Clayton County have entered into agreements with leaders from the schools and law enforcement to drastically decrease the number of cases filed arising from alleged misbehavior at school.<sup>6</sup> In their article for this issue, King County Prosecuting Attorney Dan Satterberg, Carla Lee, and Violetta Stringer assert a commitment not to have the court system “continue to act as a default system of school discipline.”<sup>7</sup>

The first century of American juvenile justice teaches the importance of humility before intervening in young people’s lives. Judges and prosecutors bear significant responsibility for the quality of justice that young people receive, but they do not necessarily have the capability to effectively address the critical issues in the lives of the youths before them. In her remarks opening the conference, Anne Lee, Director of the non-profit law firm TeamChild, powerfully conveyed the perspective of a youth caught up in the justice system, uncertain exactly how he got there or where he is headed: “But then the help goes away. It’s not quite enough. Sometimes the help doesn’t help, and it causes you to backslide.”<sup>8</sup> Research has demonstrated that a large proportion of juvenile offending is committed by

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<sup>5</sup> Julian W. Mack, *The Juvenile Court*, 23 HARV. L. REV. 104, 119 (1909) (A juvenile judge “must be a student of and deeply interested in the problems of philanthropy and child life, as well as a lover of children . . . able to understand the boys’ point of view and ideas of justice; . . . willing and patient enough to search out the underlying causes of the trouble and to formulate the plan by which, through the cooperation, oftentimes, of many agencies, the cure may be effected.”).

<sup>6</sup> A copy of one such agreement is on file with the author.

<sup>7</sup> Daniel T. Satterberg, Violetta A. Stringer & Carla C. Lee, *Re-engaging Youth with the Protective Power of Education*, 13 SEATTLE J. SOC. JUST. 857, 867 (2015).

<sup>8</sup> Anne Lee, Exec. Dir., TeamChild, Address at the Courts Igniting Change Conference (Oct. 10, 2014).

a very small cohort of court-involved youth.<sup>9</sup> Thus, many of the youth coming into the system will desist from any unlawful conduct without any significant intervention, meaning that the costs and the risks of counterproductive interventions can wisely be avoided.

Like judges and prosecutors, juvenile defense attorneys work to bring justice to court-involved youth. As articulated by Jonathon Arellano-Jackson in his contribution to this volume, defenders must not only assert their clients' rights and protect them from the system's potentially harsh consequences, but also try to connect the youth to resources and opportunities that offer them prospects for success.<sup>10</sup> Many defender offices around the country have sought to implement this vision of the empowered and effective defender, but, as described later in this introduction, not all youth receive such comprehensive, thoughtful, and effective representation.

Sharing stories of their own adolescence, Daniel Bryner and Talib Williams remind us of the critical role that a sense of belonging plays in youths' development. Reflecting on how he saw himself as he faced challenges in his life, Bryner implicitly calls all justice system actors to account for the ways in which our distorted and imperfect vision of youth, reflected back to them, often constrains them. Anne Lee captured this feeling in her conference remarks:

You get the feeling that you're not really welcome back, you're too dirty/tainted, you don't fit in. You hear people saying that you're not safe, you have to prove that you belong, you need to earn a place back on top. The temptation to let go and slip back down is strong. Giving up might be the easiest thing to do.<sup>11</sup>

This introduction seeks to place the articles of this issue in historical context while also describing the currents running through juvenile justice

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<sup>9</sup> NAT'L RES. COUNCIL OF THE NAT'L ACAD., REFORMING JUVENILE JUSTICE: A DEVELOPMENTAL APPROACH 23–24 (Richard Bonnie et al. eds., 2013).

<sup>10</sup> Jonathon Arellano-Jackson, *But What Can We Do? How Juvenile Defenders Can Disrupt The School-to-Prison Pipeline*, 13 SEATTLE J. SOC. JUST. 751, 764 (2015).

<sup>11</sup> Lee, *supra* note 8.

law and policy right now. It proceeds in three parts, starting with a look at the major trends of the past 50 years, followed by a look at the role of defense counsel, and then closing with a spotlight on the persistence of racial disparities in the juvenile justice system.

### I. A JUVENILE COURT FOR THE TWENTY-FIRST CENTURY

In 1899, the founders of the country's first juvenile court created an alternative forum designed to address the needs of youth whose behavior and circumstances indicated they were at risk.<sup>12</sup> This model, which spread rapidly across the country, emphasized informality, with a paternalistic judge empowered to guide the youth toward a successful adulthood.<sup>13</sup> Over time, the absence of procedural regularity and the ineffectiveness of the court's interventions led to calls for change, which the Supreme Court answered in its 1967 opinion in *In re Gault*.<sup>14</sup> In *Gault*, the Court held that many of the constitutional requirements for criminal proceedings applied to juvenile court delinquency adjudications as well, including the right to adequate and timely notice of the charges, the right to counsel, the protections of the privilege against self-incrimination, and the right to confront the witnesses against the accused.<sup>15</sup> As described later in this introduction, the country has not yet fully redeemed the promises made in *Gault*, especially with regard to the widespread availability of effective

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<sup>12</sup> NAT'L RESEARCH COUNCIL AND INST. OF MED., JUVENILE CRIME, JUVENILE JUSTICE: PANEL ON JUVENILE CRIME: PREVENTION, TREATMENT AND CONTROL 157 (Joan McCord et al. eds., 2001).

<sup>13</sup> *Id.*; see also Barry C. Feld, *The Juvenile Court Meets the Principle of Offense: Punishment, Treatment, and the Difference it Makes*, 68 B.U. L. REV. 821, 823 (1988) ("The Progressives introduced a variety of criminal justice reforms at the turn of the century—probation, parole, indeterminate sentences, and the juvenile court—all of which emphasized open-ended, informal, and highly flexible policies to rehabilitate the deviant.").

<sup>14</sup> *In re Gault*, 387 U.S. 1 (1967).

<sup>15</sup> *Id.* at 31–56.

counsel, but the opinion radically changed the nature of juvenile court operations.<sup>16</sup>

By the early 1990s, America's juvenile justice policy was in the midst of another dramatic shift. Prompted by concern over increased and high-profile acts of violence by teenagers, lawmakers across the country adopted policies that increased the punitive nature of juvenile court sanctions and removed many youth from the jurisdiction of juvenile court altogether, exposing them to the harsher sanctions imposed in the criminal justice system.<sup>17</sup> The alarm that fueled many of these laws proved to be overstated. The hyperbolically feared wave of "super-predators"—amoral youth of unprecedented anti-social tendencies—never materialized, and before the turn of the century, juvenile crime began a sharp and steady decline that persists to this day, with offense rates in recent years at the lowest levels since record-keeping was modernized in the 1980s.<sup>18</sup>

With court dockets no longer overwhelmed by cases of serious violent crime, juvenile justice in some respects reverted to certain pre-*Gault* patterns. An increasing percentage of cases involved behavior that in prior eras would not have been resolved through a criminal proceeding. These included intra-family disputes between youth and parents, now frequently and often inappropriately classified as "domestic violence" offenses, as if arguments between teenagers and their parents ought to be treated with the same set of responses as had been developed to address the far more serious and dangerous situations of threatening, controlling, and violent behavior

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<sup>16</sup> Feld, *supra* note 13, at 821 ("The United States Supreme Court's decision *In re Gault* transformed the juvenile court into a very different institution than that envisioned by its Progressive creators.").

<sup>17</sup> Patricia Torbet & Linda Syzmanski, *State Legislative Responses to Violent Juvenile Crime: 1996–97 Update*, JUV. JUST. BULL. (1998), <https://www.ncjrs.gov/pdffiles/172835.pdf>.

<sup>18</sup> Office of Juvenile Justice & Delinquency Programs, *Statistical Briefing Book*, OFF. OF JUST. PROGRAMS (Dec. 9, 2014), [http://www.ojjdp.gov/ojstatbb/crime/JAR\\_Display.asp?ID=qa05201](http://www.ojjdp.gov/ojstatbb/crime/JAR_Display.asp?ID=qa05201).

between adults in (or formerly in) toxic intimate relationships.<sup>19</sup> Schools became a primary source of referrals to court, creating the pipeline identified in the conference's title. This development was part of a broader "get tough" approach to juvenile behavior, as legislators and education leaders transformed school discipline policy by increasing the severity of administrative sanctions (more, longer, and more automatic suspensions and expulsions) and drastically increasing the number of cases of school-based conduct referred to court.<sup>20</sup> Finally, justice system actors recognized that a disproportionate number of youth appearing in juvenile court manifested serious mental illnesses, including large numbers with co-occurring mental health and substance abuse issues.<sup>21</sup> In sum, although the social context differed dramatically from a century ago, the court found itself once again in the position of being asked to solve the myriad, complex problems of youth behavior or, alternatively, the inability of other institutions to effectively guide youth along their developmental pathways.

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<sup>19</sup> At a symposium at Seattle University School of Law on June 8, 2015, representatives of the office of the King County Prosecuting Attorney's Office presented data that in recent years, such cases made up as much as one-third of the new referrals to juvenile court. In response to this, the office has developed a new program designed to provide services to these youths and their families outside of the judicial process. Daniel T. Satterberg, *New Approach Regarding Youth who Commit Violence in the Home*, KING CNTY. PROSECUTOR'S OFF. (Mar. 20, 2015), <http://www.kingcounty.gov/Prosecutor/news/2015/march/firs.aspx> (announcing a program to divert such cases away from formal processing and to enable youth and their families to learn to manage and reduce conflict).

<sup>20</sup> NAACP LEGAL DEFENSE AND EDUC. FUND, INC., *DISMANTLING THE SCHOOL-TO-PRISON PIPELINE* (2005), available at [http://www.naacpldf.org/files/publications/Dismantling\\_the\\_School\\_to\\_Prison\\_Pipeline.pdf](http://www.naacpldf.org/files/publications/Dismantling_the_School_to_Prison_Pipeline.pdf).

<sup>21</sup> See Joseph J. Cocozza & Kathleen Skowrya, *Youth With Mental Health Disorders: Issues and Emerging Responses*, 7 JUV. JUST. 3, 6 (2000), available at <https://www.ncjrs.gov/pdffiles1/ojdp/178256.pdf>; Thomas Grisso, *Adolescent Offenders with Mental Disorders*, 18 JUV. JUST. 143, 146-47 (2008), available at <http://futureofchildren.org/publications/journals/article/index.xml?journalid=31&articleid=45&sectionid=146>.

Unlike their early-twentieth-century predecessors, modern juvenile court judges find themselves addressing these cases against the backdrop of an increasingly integrated and refined legal-scientific understanding of adolescence. As it did in the *Gault* case, the Supreme Court has again transformed juvenile justice policy. In what is often referred to as “the Roper trilogy,” the court has ruled that, with respect to offenses committed by someone under the age of 18, the death penalty cannot be imposed at all,<sup>22</sup> life without parole sentences cannot be imposed for crimes other than homicide,<sup>23</sup> and, even in homicide cases, life sentences without parole cannot be imposed mandatorily.<sup>24</sup> In all of these cases, the court referred to the emerging scientific consensus that critical neurological development continues throughout adolescence and the reinforcing psychological literature demonstrating the ways in which youth decision-making differs from that of adults.<sup>25</sup> None of these opinions directly addressed the operations of juvenile court,<sup>26</sup> but, together, they establish a structure and norms for how society can and should respond to allegations of criminal conduct by young people.

A brief comparison of the historical paths that led to *Gault* and the *Roper* line of cases provides some reason to hope that the evolving approach to juvenile justice policy will be more stable than the zigzag pattern that followed *Gault*. The *Gault* case presented an almost cartoonish version of the early-model juvenile court. Gerald Gault was alleged to have participated, in some manner, in making a lewd phone call to a neighbor.<sup>27</sup>

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<sup>22</sup> *Roper v. Simmons*, 543 U.S. 551 (2005).

<sup>23</sup> *Graham v. Florida*, 130 S. Ct. 2011 (2010).

<sup>24</sup> *Miller v. Alabama*, 132 S. Ct. 2455 (2012).

<sup>25</sup> *Roper*, 543 U.S. at 569–70; *Graham*, 130 S. Ct. at 2026; *Miller*, 132 S. Ct. at 2464–65.

<sup>26</sup> In the midst of the *Roper* line of cases, the court also decided *J.D.B. v. North Carolina*, a case that did arise in a juvenile court. *J.D.B. v. North Carolina*, 131 S. Ct. 2394 (2011). In *J.D.B.*, the court ruled that a suspect’s age is a relevant factor for courts to consider in determining whether the suspect was in custody for purposes of applying the *Miranda* doctrine. The court did not cite to the science directly, but it did rely on both *Roper* and *Graham*.

<sup>27</sup> *In re Gault*, 387 U.S. 1, 4 (1967).



The process by which the court determined that Gerald was involved was disturbingly informal, with the critical events taking place in chambers, with no competent witnesses sworn or examined and without counsel appointed for Gerald.<sup>28</sup> Most alarming, having determined that Gerald's conduct warranted court jurisdiction and in light of the fact that he had been before the court before, for equally trivial and not necessarily better-proven conduct, the court committed Gerald to the care of the state, with the possibility of out-of-home placement lasting more than five years.<sup>29</sup> In contrast, the criminal behavior in *Roper*, *Graham*, and *Miller* was grave and disturbing. As set out by Justice Kennedy at the outset of the *Roper* opinion, the conduct of the defendant, Christopher Simmons, reads like a script for a get-tough-on-juvenile-crime scare ad. The court addressed no claims of procedural irregularities in any of these cases.

Speaking to a national conference of juvenile defense attorneys in 2006, Norman Dorsen, the attorney who argued on behalf of Gerald Gault in the Supreme Court, acknowledged that when he first read the case materials, in his role at the American Civil Liberties Union, he did not appreciate the seriousness of the issues raised.<sup>30</sup> In fact, he put the case aside, with no intention of moving it forward. At the urging of a colleague in the office, he took a second look, changed his mind, and succeeded.<sup>31</sup> The results in *Roper*, *Graham*, and *Miller*, by contrast, reflected a concerted, long-term advocacy strategy developed by leaders of the juvenile defense community.

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<sup>28</sup> *Id.* at 5–7.

<sup>29</sup> *Id.* at 7–8.

<sup>30</sup> Reflections on Gault, Norman Dorsen, addressing the National Juvenile Defender Summit in Washington, DC on October 27, 2006 (an audio copy of the remarks is on file with the author). See also Norman Dorsen, *Reflections on In Re Gault*, 60 RUTGERS L. REV. 1, 2–3 (2007).

<sup>31</sup> *Id.* The *Gault* court drew on themes already sounded in *Kent v. United States*, 383 U.S. 541 (1966), in which the court addressed the requirements, under the governing statute, for a procedurally sound hearing to determine whether a youth's case should remain within juvenile court jurisdiction or be transferred to criminal court for prosecution as an adult.

The effort was intentional, multi-disciplinary, and multi-forum.<sup>32</sup> In the 1990s, juvenile justice advocates found important allies at the John D. and Catherine T. MacArthur Foundation, which in the words of Laurie Garduque, the foundation's Director of Justice Reform, "aimed to create a knowledge base for the next generation of reform: a more rational, fair, effective juvenile justice that recognized developmental differences

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<sup>32</sup> In a recent series of blog posts commemorating the tenth anniversary of the *Roper* opinion, advocates described how this came about. Steven Drizin, Clinical Professor of Law, Northwestern University, wrote:

Support for the death penalty in general was declining, largely due to public concerns that innocent people might be executed. Juvenile violent crime had declined for six years in a row, and we believed a 'kids are different' framework could change the narrative about juvenile offenders. We had faith in new, emerging science about the teen brain that seemed to provide a 'hard science' backup to what adolescent development experts had been telling us for years. This science didn't answer all questions about juvenile culpability. But, it was new; it was cool, and the fMRI images of teenage brain scans were a vivid and compelling way to show that juveniles as a class were less culpable for their crimes.

Steven Drizin, *Roper v. Simmons Ten Years Later: Recollections and Reflections on the Abolition of the Juvenile Death Penalty*, JUV. L. CTR. (Mar. 2, 2015), <http://jlc.org/blog/roper-v-simmons-ten-years-later-recollections-and-reflections-abolition-juvenile-death-penalty>. Bernardine Dohn, founder and former director of the Children and Family Justice Center (CFJC), Bluhm Legal Clinic, Northwestern Law School, wrote:

The Juvenile Death Penalty Initiative (JPDI) conducted an educational campaign which included op-eds; position papers and resolutions; speaking at national, state, and international meetings; mobilizing juvenile defenders; and familiarizing researchers in adolescent development with the critical issues. [Advocates] built an international strategy. . . . [T]hey obtained resolutions and calls for stays of executions from the Mexican government, Nelson Mandela, Archbishop Desmond Tutu, the Council of Europe, and the Inter-American Commission on Human Rights.

Bernardine Dohn, *Roper v. Simmons Ten Years Later, Part 2: Organizing Amicus Support, Developing Legislation Campaigns, and Preparing for Oral Arguments*, JUV. L. CTR. (Mar. 2, 2015), <http://www.jlc.org/blog/roper-v-simmons-ten-years-later-part-2-organizing-amicus-support-developing-legislation-campaig>.

between adolescents and adults.”<sup>33</sup> The Foundation created a network of researchers to develop this knowledge base.<sup>34</sup> The network designed its work to address what policymakers needed to know, rather than starting from any academic or theoretical preconceptions.<sup>35</sup> The interplay between advocates and researchers also took the form of a series of amicus briefs submitted to the Supreme Court in *Roper* et al.<sup>36</sup>

For all of the attention that the *Roper* line of cases has received, offenses that expose young people to the kinds of punishment at issue in those cases are infrequent and extraordinary when compared to the cases that bring most youth into contact with the justice system. Fortunately, the insights to be gained from an increasingly refined understanding of adolescent development and behavior have broad applicability to the issues facing the juvenile justice system. In 2013, the National Academies of Science released a report entitled *Reforming Juvenile Justice: A Developmental Approach*. In its preface, the report states:

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<sup>33</sup> *Roper v. Simmons Ten Years Later: Recollections and Reflections on the Abolition of the Juvenile Death Penalty*, JUV. L. CTR. (Mar. 2, 2015), <http://jlc.org/blog/roper-v-simmons-ten-years-later-recollections-and-reflections-abolition-juvenile-death-penalty> (emphasis omitted).

<sup>34</sup> See *Bringing Research to Practice in the Juvenile Justice System*, ADOLESCENT DEV. & JUV. JUST., <http://www.adjj.org/content/index.php> (last visited Apr. 9, 2015).

<sup>35</sup> “I learned from the ADJJ network experience that you start with the legal question and ask how science might be informative, rather than the reverse.” Laurence Steinberg, *Roper v. Simons Ten Years Later: Recollections and Reflections on the Abolition of the Juvenile Death Penalty*, JUV. L. CTR. (Mar. 2, 2015), <http://jlc.org/blog/roper-v-simmons-ten-years-later-recollections-and-reflections-abolition-juvenile-death-penalt-1>. In the midst of the emergence of this jurisprudence, there was some suggestion in the scholarship that the science was peripheral, but writing for the court in *Miller*, the culminating case, Justice Kagan referred to the two earlier cases by stating “Our decisions rested not only on common sense—on what ‘any parent knows’—but on science and social science as well.” *Miller v. Alabama*, 132 S. Ct. 2455, 2464 (2012).

<sup>36</sup> See *Roper v. Simmons*, 543 U.S. 551, 569 (2005) (citing *Less Guilty by Reason of Adolescence: Developmental Immaturity, Diminished Responsibility, and the Juvenile Death Penalty*, 58 AM. PSYCHOL. 1009, 1014 (2003)); *Graham v. Florida*, 130 S. Ct. 2011, 2026 (2010) (citing briefs from the American Medical Association and the American Psychological Association).

If designed and implemented in a developmentally informed way, procedures for holding adolescents accountable for their offending, and the services provided to them, can promote positive legal socialization, reinforce a prosocial identity, and reduce reoffending. However, if the goals, design, and operation of the juvenile justice system are not informed by this growing body of knowledge, the outcome is likely to be negative interactions between youth and justice system officials, increased disrespect for the law and legal authority, and the reinforcement of a deviant identity and social disaffection.<sup>37</sup>

Synthesizing the knowledge obtained through recent research and reflecting on the pendulum swings of juvenile justice policy in prior eras, the National Academy authors point the way toward a more stable course of development, with smarter policy constantly being assessed and revised, without the need for drastic changes of course. The recommendations include some that are simply common sense, such as “[e]liminate interventions that rigorous evaluation research has shown to be ineffective or harmful; [and] [k]eep accurate data on the type and intensity of interventions provided and the results achieved.”<sup>38</sup> Other recommendations are particular to what “[t]he scientific literature shows . . . [as] three conditions . . . critically important to healthy psychological development in adolescence,” including: the presence of an involved and concerned parent figure; a peer group that values pro-social behavior and academic success; and the development of the ability to engage in autonomous decision-making and critical thinking.<sup>39</sup>

In sum, two decades of coordinated, focused effort in law, neuroscience, and psychology have provided a foundation for juvenile court actors to transcend a century marked by shifting objectives and, too frequently, ineffectiveness. For example, the compilation and review of better data has

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<sup>37</sup> NAT’L RES. COUNCIL OF THE NAT’L ACAD., *supra* note 9, at viii.

<sup>38</sup> *Id.* at 325.

<sup>39</sup> *Id.* at 101–02.

persuaded many education leaders to move away from routine use of suspension and expulsion to address misconduct at school.<sup>40</sup> These practices, by cutting youth off from positive supports, had helped to increase the risk of justice system involvement. The adoption of a restorative justice approach to school discipline is supported by the National Academy's assessment that restorative justice, in general, is a "developmentally appropriate" means of achieving accountability for undesirable conduct by adolescents.<sup>41</sup>

## II. THE 21<sup>ST</sup>-CENTURY JUVENILE DEFENSE ATTORNEY

In his contribution to this volume, Jonathon Arellano-Jackson addresses the multi-faceted role of defense attorneys representing clients facing charges arising from school-based incidents:

For juvenile defenders that want to focus their efforts within the system, they can keep their clients in school by advocating for their educational needs, pursuing alternative legal resolutions, educating judges, building relationships with probation officers, and collaborating with advocates in the civil system. Outside of the system, juvenile defenders can disrupt the pipeline by participating in policy development in their jurisdiction and counteracting implicit biases they may have about their clients of color.<sup>42</sup>

Each of the tasks in this list is essential. Alas, even thoroughly committed and well-trained defenders will struggle to find the time to attend to them all. Unfortunately, not all youth have the benefit of such capable counsel.

For a long time after the Supreme Court announced the right to counsel in delinquency cases in *In re Gault*,<sup>43</sup> juvenile court was treated as a training ground, a place for attorneys who were deemed not yet ready for the

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<sup>40</sup> See, e.g., Claudia Rowe, *In school discipline, intervention may work better than punishment*, SEATTLE TIMES (Jan. 25, 2015, 8:15 PM), [http://old.seattletimes.com/html/education/2025538481\\_edlabrestorativejusticexml.html](http://old.seattletimes.com/html/education/2025538481_edlabrestorativejusticexml.html).

<sup>41</sup> NAT'L RES. COUNCIL OF THE NAT'L ACAD., *supra* note 9, at 5.

<sup>42</sup> Arellano-Jackson, *supra* note 10, at 752.

<sup>43</sup> *In re Gault*, 387 U.S. 1 (1967).

challenges of “adult” criminal representation.<sup>44</sup> In the process of creating a nationwide cadre of effective advocates, leaders in the juvenile defense community have turned this notion on its head, recognizing the distinctive challenges of integrating the traditional role of a defense attorney with the complex multi-forum, multi-disciplinary advocacy essential for effective representation of allegedly delinquent youth. In 1995, the American Bar Association Juvenile Justice Center, allied with other youth-focused organizations, published *A Call for Justice*,<sup>45</sup> a report that identified model programs and practices for representing youth and described how rare such programs and practices were at that time. In 2004, the National Juvenile Defender Center, this time working with the National Legal Aid and Defender Association, announced *Ten Core Principles For Providing Quality Delinquency Representation Through Public Defense Delivery Systems*. These principles, issued in revised form in 2008, followed the pattern established with the American Bar Association’s *Ten Principles of a Public Defense Delivery System*, announced in 2002. In the Preamble, the authors of the Delinquency Core Principles assert that “The Representation of Children and Adolescents is a Specialty.”<sup>46</sup> The refinement of the role of the juvenile defender reached its culmination with the 2012 publication of

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<sup>44</sup> PATRICIA PURITZ ET AL., A CALL FOR JUSTICE: AN ASSESSMENT OF ACCESS TO COUNSEL AND QUALITY OF REPRESENTATION IN DELINQUENCY PROCEEDINGS 25 (2002), available at [http://njdc.info/wp-content/uploads/2013/11/A-Call-for-Justice\\_An-Assessment-of-Access-to-Counsel-and-Quality-of-Representation-in-Delinquency-Proceedings.pdf](http://njdc.info/wp-content/uploads/2013/11/A-Call-for-Justice_An-Assessment-of-Access-to-Counsel-and-Quality-of-Representation-in-Delinquency-Proceedings.pdf) (“Within public defender offices, the representation of children is typically considered less important than the ‘real work’ of the office in representing adult felony clients, and career ladders are quite limited for juvenile court attorneys. Assignment to juvenile court is thought of as training before a promotion to felony trials, and the assignment of senior trial lawyers to juvenile work is considered punishment.”).

<sup>45</sup> *Id.*

<sup>46</sup> NAT’L JUVENILE DEFENDER CTR., TEN CORE PRINCIPLES FOR PROVIDING QUALITY DELINQUENCY REPRESENTATION THROUGH PUBLIC DEFENSE DELIVERY SYSTEMS (2008), available at <http://njdc.info/wp-content/uploads/2013/11/10-Core-Principles.pdf>.

the National Juvenile Defense Standards.<sup>47</sup> The Standards proceed from the premise that juvenile defense is “a specialized practice requiring specialized skills.”<sup>48</sup> A juvenile defender seeking to comply with the Standards must:

be knowledgeable about the key aspects of developmental science and other research that informs specific legal questions regarding capacities in legal proceedings, amenability to treatment, and culpability; and . . . be proficient with the operations of, and laws regarding, child-serving institutions, including schools, social service agencies, and mental health agencies.<sup>49</sup>

In 2012, the Supreme Court of Washington adopted the caseload Standards for Indigent Defense Services previously approved by the Washington State Bar Association.<sup>50</sup> Per Standard 3.4, a juvenile defense attorney should not have a caseload in excess of 250 juvenile delinquency cases per year. This figure is lower than the 300-case standard adopted for misdemeanor cases and is equal to that established for civil commitment cases. These relative weightings are telling, as civil commitment hearings have long been recognized as requiring advanced skill and expertise.

Despite these developments, youth in all parts of the country do not yet have reliable access to “the guiding hand of counsel at every step in the proceedings against”<sup>51</sup> them. In March of this year, the United States Department of Justice filed a Statement of Interest in a lawsuit in Georgia in which advocates have alleged that children accused of delinquency in the defendant-county “routinely waive their right to counsel without ever

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<sup>47</sup> NAT’L JUVENILE DEFENDER CTR., NATIONAL JUVENILE DEFENSE STANDARDS (2012), *available at* <http://njdc.info/wp-content/uploads/2013/09/NationalJuvenileDefenseStandards2013.pdf>.

<sup>48</sup> *Id.* at 9.

<sup>49</sup> *Id.* at 21–22.

<sup>50</sup> Order, In the Matter of the Adoption of New Standards for Indigent Defense and Certification of Compliance, NO 25700-A-1004 (June 15, 2012), *available at* <http://www.courts.wa.gov/content/publicUpload/Press%20Releases/25700-A-1004.pdf>

<sup>51</sup> *In re Gault*, 387 U.S. 1, 36 (1967).

having seen or been advised by a lawyer.”<sup>52</sup> Without taking a position on the merits of the allegations of “assembly-line justice,” the department’s lawyers remarked that it was “particularly troubling” that detained youth are allegedly “regularly presented with a Hobson’s Choice: waive counsel without ever speaking with an attorney and have your case resolved immediately *or* schedule another hearing, remain in detention and hope counsel can be present at the next proceeding.”<sup>53</sup>

This pernicious choice can take many forms. Faced with the option of having a lawyer appointed for their child, which likely means the prospect of several additional court dates—and the attendant hassles related to child care or getting time off from work and the possibility of court-imposed fees for the lawyer’s services—parents will often induce their children to go forward without counsel.<sup>54</sup> In a particularly disturbing 2007 case<sup>55</sup> a Nebraska judge sanctioned the waiver of counsel on the part of a nine-year-old boy an appellate court would later describe as “mildly mentally handicapped” despite the patent impossibility that this youth could have understood much of what was going on.<sup>56</sup>

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<sup>52</sup> Statement of Interest of the U.S., N.P. et al., v. Georgia, No. 2014-CV-241025 (Mar. 13, 2015) at 16, *available at* <http://www.justice.gov/file/377911/download>.

<sup>53</sup> *Id.* (emphasis in original).

<sup>54</sup> Teaching in clinics in four states for over two years, the author has observed instances of this phenomenon on numerous occasions. *See also In re Manuel R.*, 543 A.2d 719 (Conn. 1988). In that case, “[w]hile [the respondent’s mother] had confidence in [her son] and hoped that the detention would help him, she was ‘not going to keep letting him pull me down ‘cuz I still have a life to lead, too.’” *Id.* at 720. She stated that defense counsel was “going to force this thing into where [the respondent is] going back home and [the respondent is] going to do the same thing again. I’m going to miss more time from work and I’m going to lose my job, and I’m not going for it. If I have to represent my son I’ll represent him.” *Id.* at 721.

<sup>55</sup> *In re Interest of Dalton S.*, 730 N.W.2d 816 (2007).

<sup>56</sup> One wonders how even an especially sharp nine-year-old would track the following litany: “[Y]ou have a right to be represented by an attorney at every stage of the proceedings. You and your family would be free to hire an attorney of your choice or if you wish to be represented by counsel, and your family doesn’t have enough money to go out and hire an attorney right now, you can ask the Court to appoint an attorney for you at the public expense. To be considered for a court appointed attorney, your family would have to complete a financial affidavit so I can determine whether or not you meet the



The courts found the mother to be a suitable protector of her son's interests despite her on-the-record determination that he waive his rights without any serious consideration of the implications of doing so.<sup>57</sup> Having dispensed with this essential determination as if it was the most trivial of boilerplate, the trial court committed the child for placement outside the home for his conviction of disorderly conduct, which arose from "an incident at an elementary school in which [he] allegedly hit another student and then knocked over some chairs."<sup>58</sup> The echoes of Gerald Gault, convicted of making lewd statements over the telephone in 1963 and committed for placement, are unmistakable and depressing.

Arellano-Jackson asserts that one simple but very important thing that defenders can do for their juvenile clients is to intercede to ensure that "court proceedings can be slowed down if necessary."<sup>59</sup> That is one way of facilitating the level of comprehension any youth should have regarding the proceedings he is involved in. In 2012, TeamChild, a non-profit youth advocacy organization based in Washington State, spearheaded an effort, as part of the MacArthur Foundation's Models for Change reform initiative, to develop a set of Model Colloquies for use in Juvenile Court.<sup>60</sup> These

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current guidelines of the Court for appointed counsel. On the other hand, you can waive or give up your right to have an attorney and just go ahead today with your mother. Did you want to have a lawyer represent you in this court?" *Id.* at 820.

<sup>57</sup> Dalton's mother told Dalton, "You don't need a lawyer. Say no. Say it." Dalton responded, "No." The court again asked, "You understood that right and you're telling me that you just want to go ahead with your mom today and not have a lawyer here, is that right?" Dalton's mother and Dalton responded, in turn, affirmatively. The court then addressed Dalton's mother more directly, "Is that all right with you, ma'am, that we'd proceed today without counsel?" Dalton's mother responded that it was. *Id.*; see also Barbara Fedders, *Losing Hold Of The Guiding Hand: Ineffective Assistance Of Counsel In Juvenile Delinquency Representation*, 14 LEWIS & CLARK L. REV. 771, 800-801 (2010).

<sup>58</sup> *Id.* at 819.

<sup>59</sup> Arellano-Jackson, *supra* note 10, at 766.

<sup>60</sup> TEAMCHILD & JUVENILE INDIGENT DEFENSE ACTION NETWORK, WASH. JUDICIAL COLLOQUIES PROJECT, A GUIDE FOR IMPROVING COMMUNICATION AND UNDERSTANDING IN JUVENILE COURT (2012), available at [http://www.teamchild.org/docs/uploads/JIDAN\\_Judicial\\_Colloquies\\_FINAL.pdf](http://www.teamchild.org/docs/uploads/JIDAN_Judicial_Colloquies_FINAL.pdf).

research-based templates use youth-oriented language and format to improve the likelihood of comprehension and retention on the part of court-involved youths and their families.

As noted in the Statement of Interest the Justice Department filed in Georgia, that case has arisen less than three years after the Department entered a Memorandum of Agreement with Memphis and Shelby Counties in Tennessee, addressing systemic failures in their juvenile courts. That agreement called for the creation of a juvenile defender system in which attorneys had “reasonable workloads” and “sufficient resources” to perform their challenging, constitutionally mandated role.<sup>61</sup> Any reader inclined to think these issues are peculiar to the south or central regions of the country is directed to read *State v. A.N.J.*, in which the Washington Supreme Court permitted a youth to withdraw a guilty plea to charge of child molestation in the first degree after finding that counsel spent “as little as 55 minutes” with his client, did no independent investigation, did not carefully review the plea agreement, and consulted with no experts.<sup>62</sup> Moreover, the court determined that in the brief time the attorney spent with the youth and his parents, he managed to create substantial confusion as to the consequences of such a conviction, including whether the record of such an offense could ever be sealed.<sup>63</sup>

These reflections on the accomplishments and failures of juvenile defenders come at a pivotal moment for the youth advocacy community. In the years following *Gault*, a cohort of visionary attorneys entered the juvenile justice field, and they have provided leadership to advocates around the country all the way through the *Roper* trilogy. In the last two

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<sup>61</sup> U.S. DEP’T OF JUSTICE CIVIL RIGHTS DIV., MEMORANDUM OF AGREEMENT REGARDING THE JUVENILE COURT OF MEMPHIS AND SHELBY COUNTY Section III.A.1(e) (2012), *available at* <http://www.justice.gov/iso/opa/resources/87720121218105948925157.pdf>.

<sup>62</sup> *State v. A.N.J.*, 225 P.3d 956, 962 (Wash. 2009).

<sup>63</sup> *Id.* at 968–69.

years, several members of that cohort have announced their retirements.<sup>64</sup> These individuals and the organizations they have led have been instrumental in advancing the field of juvenile defense, protecting the rights of children, and preserving the vitality of the juvenile justice system overall. As they and others in their cohort step aside, it will be incumbent upon their successors in the field to uphold this tradition of passionate, engaged, and intelligent advocacy.

### III. THE CONTINUING IMPERATIVE OF ELIMINATING RACIAL DISPARITIES

Any discussion of “Courts Igniting Change” at this moment in history must address the persistent disproportionate representation of racial and ethnic minority youth.<sup>65</sup> Reviewing decades of data, the authors of the National Academy report observed,

[i]n sum, with few exceptions, data consistently show that youth of color have been overrepresented at every stage of the juvenile justice system, that race/ethnicity are associated with court outcomes, and that racial/ethnic differences increase and become more pronounced with further penetration into the system through the various decision points.<sup>66</sup>

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<sup>64</sup> The list of retirees includes Patricia Puritz, founding Executive Director of the National Juvenile Defender Center; Robert Schwartz, co-founder and long-serving Executive Director of the Juvenile Law Center; and Bernardine Dohrn, founder and former director of the Children and Family Justice Center at Northwestern Law School. While this article was being edited, Georgetown University Law Center announced that Professor Wallace Mlyniec, was stepping down from his position as director of the school’s Juvenile Justice Clinic after forty years in the role.

<sup>65</sup> See NAT’L RES. COUNCIL OF THE NAT’L ACAD., *supra* note 9, at 212 (“Despite a research and policy focus on this matter for more than two decades, remarkably little progress has been made on reducing the disparities themselves or in reaching scholarly consensus on the root source of these disparities (National Research Council and Institute of Medicine, 2001). Volumes of data documenting disparities have been collected, but comparatively little progress has been made in addressing the problem (Kempf-Leonard, 2007; Piquero, 2008a; Bishop and Leiber, 2012).”).

<sup>66</sup> NAT’L RES. COUNCIL OF THE NAT’L ACAD., *supra* note 9, at 222 (citation omitted).

The succession of high-profile police shootings of men—and in the case of Tamir Rice of Cleveland, a boy—of color over the past year has prompted waves of protest concerning the treatment of individuals and communities of color by law enforcement. Locally, the issue has come to the fore in the discussions about the construction of a new building that will house, among other things, the juvenile court and the juvenile detention facility. In an address at King County Superior Court’s annual tribute to Justice Thurgood Marshall, Presiding Judge Susan Craighead—who had previously published a co-authored editorial explaining the need for a new facility<sup>67</sup>—acknowledged that judges and other leaders “have not been listening well enough to our community.”<sup>68</sup> She pointed to the concern that efforts to reduce reliance on detention have “disproportionately benefited white youth” and that 2014 was the first year that the number of referrals for African-American youth in the county exceeded the number for white youth.<sup>69</sup> Remarkable for their candor, these comments were in line with several of the recommendations from the National Academy on how to reverse decades of failure to reduce disproportionality. The National Academy urged local leaders to build a broad community-wide coalition to make change and to be transparent about the difficulties and failures that will inevitably occur.

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<sup>67</sup> Susan Craighead & Wesley St. Clair, *Guest Editorial: Racial Disparity Is Real, and so Is the Need for a New Youth Justice Center*, THE STRANGER (Sept. 30, 2014, 6:00 AM), <http://slog.thestranger.com/slog/archives/2014/09/30/guest-editorial-racial-disparity-is-real-and-so-is-the-need-for-a-new-youth-justice-center>; Cf., Alex West & James Williams, *Guest Editorial: We Believe Seattle Doesn’t Need a Juvenile Detention Center at All*, THE STRANGER (Sept. 29, 2014, 6:00 AM), <http://slog.thestranger.com/slog/archives/2014/09/29/guest-editorial-we-believe-seattle-doesnt-need-a-juvenile-detention-center-at-all>.

<sup>68</sup> Susan Craighead, *Guest Editorial: A Call to Action to Address Racial Disproportionality in the Juvenile Justice System*, THE STRANGER (Feb. 12, 2015, 6:00 AM), <http://www.thestranger.com/blogs/slog/2015/02/16/21710313/guest-editorial-a-call-to-action-to-address-racial-disparity-in-the-juvenile-justice-system>.

<sup>69</sup> *Id.*

By sparking important conversations between the justice and school systems, the Courts Igniting Change Conference likewise marked a potentially significant step forward. The absence of significant progress on this issue means that there are few measures that can be said to offer an evidence-based approach to success. All engaged in the process will need to simultaneously make and gather evidence by changing practices that are suspected of contributing to the problem.

#### CONCLUSION

The present moment holds the promise that we might break the cycle of pendulum-like swings, transcend sterile rhetorical debates, and effectively pursue youth development and community safety in a sustainable, comprehensive manner. Collectively, the pieces in this issue and the conversations at the conference invite each of us to (1) see the system through the eyes of all of the actors involved and (2) take responsibility for the steps we can take from our own specific positions to bring about the needed changes. The significance of this issue will ultimately be measured by what sort of change is ignited and whether we can say, before long, that the juvenile justice system is fairer, more effective, and, perhaps, less utilized than it is today.